

Decision No. C22-0636

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22AL-0026G

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IN THE MATTER OF ADVICE LETTER NO. 16 FILED BY BLACK HILLS COLORADO GAS, INC. DOING BUSINESS AS BLACK HILLS ENERGY TO REVISE ITS GAS SERVICES LINE EXTENSION TARIFFS, TO BECOME EFFECTIVE MARCH 7, 2022.

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**COMMISSION DECISION APPROVING SETTLEMENT AGREEMENT, PERMANENTLY SUSPENDING TARIFFS, AND REQUIRING COMPLIANCE TARIFF FILING**

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Mailed Date: October 21, 2022  
Adopted Date: October 5, 2022

**I. BY THE COMMISSION**

**A. Statement**

1. On January 12, 2022, Black Hills Colorado Gas, Inc. (Black Hills or Company) filed Advice Letter No. 16. Black Hills seeks to update its line extension policy for natural gas service in accordance with previous Commission orders.

2. On July 29, 2022, Black Hills, Staff of the Colorado Public Utilities Commission (Staff), and the Colorado Office of Utility Consumer Advocates (UCA) filed an Unopposed Joint Motion to Approve Settlement Agreement (Joint Motion) and the Settlement Agreement.

3. This Decision grants the Joint Motion consistent with the discussion below. We authorize Black Hills to submit a compliance advice letter with revised tariff sheets to modify the line extension policy in accordance with the Settlement Agreement.

**B. Discussion****1. Procedural Background**

4. Through Decision No. C20-0372, issued on May 19, 2020 in Black Hills' comprehensive rate case in Proceeding No. 19AL-0075G, the Commission directed the Company to file for approval of construction allowances 30 days after a final decision in the Company's next Phase II rate case. Decision No. R21-0748 in Proceeding No. 21AL-0236G, the Company's most recent rate case to include a Phase II component, became the decision of the Commission by operation of law on December 13, 2021.

5. Prior to January 12, 2022, the filing deadline calculated as 30 days following a final order in Proceeding No. 21AL-0236G, Black Hills requested a delay in the filing of its line extension policy in Proceeding No. 21V-0528G. Black Hills sought to make its construction allowance filings no later than 30 days after a final Commission decision in the ongoing Gas Rulemaking in Proceeding No. 21R-0449G. By Decision No. C21-0826, issued on December 28, 2021, the Commission rejected Black Hills' request for a delay, finding that the Company had not shown good cause for a variance from the directives in Decision No. C20-0372.

6. Black Hills submitted pre-filed Direct Testimony of one witness, Douglas Hyatt, with its Advice Letter No. 16 filing on January 12, 2022.

7. By Decision No. C22-0136, issued on March 7, 2022, the Commission suspended the effective date of the tariffs filed with Advice Letter No. 16 for 120 days or to July 5, 2022, pursuant to § 40-6-111(1), C.R.S., and set the matter for hearing.

8. By Decision No. C22-0267-I, issued on May 2, 2022, the Commission established that the parties to this case include Black Hills, Staff, and UCA. The decision also suspended the

effective date of the tariff sheets filed with Advice Letter No. 16 an additional 130 days, to November 12, 2022, pursuant to § 40-6-111(1), C.R.S.

9. By Decision No. C22-0298, issued on May 13, 2022, the Commission approved a procedural schedule. A hearing in this matter was scheduled for September 22 and 23, 2022.

10. On July 15, 2022, Staff filed the Answer Testimony and Attachments of Eric Haglund. Also on July 15, 2022, UCA filed the Answer Testimony and Attachments of Dr. Scott England.

11. On July 29, 2022, Black Hills, Staff, and UCA filed the Joint Motion.

12. By Decision No. C22-0546-I, issued September 15, 2022, the Commission vacated the September hearings in light of the unopposed settlement filed on July 29, 2022.

## **2. Black Hills' Initial Proposals for its Line Extension Policy**

13. Black Hills proposed to use a revenue-based discounted cash flow methodology for calculating the construction allowances set forth in the Company's line extension policy. According to the Company, the updated construction allowances reflect the benefit of adding revenue streams from distribution growth with the goal of making new service installations more affordable to customers while avoiding any increase in costs for existing customers. Black Hills further referenced Proceeding No. 18M-0082EG, the Commission's 2018 proceeding to evaluate line extension policies pursuant to Senate Bill 17-271, concluding that some sort of revenue-based method for calculating construction allowance calculations is appropriate.

14. Black Hills explained that when customers apply for a line extension, they pay a customer contribution upfront to build out the necessary infrastructure to connect to the natural gas system. If subsequent customers connect to that same line extension within a certain amount of time of its construction, *i.e.*, the refundable period, the Company will return to the customer a

portion of the new customer contributions to the original customer who paid the initial customer contribution. Black Hills stated that the refundable period for customer contributions currently varies based on rate areas.

15. Black Hills also proposed to implement a single Customer Contribution Payment Option and amended certain language in its tariffs for statewide consistency across its service areas. Staff recommended that the Customer Contribution Payment Option tariffs retain language allowing customers to make a lump sum payoff at any time without penalty. Consistent with Staff's recommendation, the Settlement establishes that the Company's tariffs will include a single Customer Contribution Payment Option and retain the specific language allowing customers to make a lump sum payoff.

### **3. Positions of the Intervening Parties**

16. Staff recommended in Answer Testimony that the Commission should not eliminate construction allowances entirely. Staff suggested that the Commission require Black Hills to use the average embedded cost methodology to calculate construction allowance amounts, rather than the revenue-based approach proposed by the Company. Staff's proposed approach results in lower construction allowances than those proposed by the Company for most type of customers. Staff also presented an alternative suggestion to require new customers to bear the upfront costs of meters and regulators.

17. Staff recommended that the Commission approve a refundable period of five years, as proposed by Black Hills. Staff also suggested that the Commission modify the Customer Contribution Payment Option to include a provision allowing customers to make a lump sum payoff at any time during the financing period with no penalty.

18. In its Answer Testimony, UCA recommended the Commission recognize that a likely outcome of the rulemaking in Proceeding No. 21R-0449G with regard to gas line extension policies is the elimination of any construction allowance or a significant reduction in such allowances from the utility to consumers. UCA suggested that as an alternative to prohibiting line extension dollars from being offered by the utility to customers, the Commission could approve the Company's line extension recommendation using the embedded cost methodology as an acceptable interim measure until official rules stemming from Proceeding No. 21R-0449G (Gas Rulemaking) are finalized and in effect.

#### **4. Settlement Agreement**

19. The Settlement establishes the specific construction allowance amounts that Black Hills will implement "on an interim basis." These construction allowance amounts are the same as those that Staff recommended in its Answer Testimony. While Black Hills accepts these construction allowance amounts, it neither endorses nor rejects the methodology used in the calculation of the construction allowance amounts.

20. Consistent with Black Hills' Direct Testimony, the Settlement Agreement establishes that the Company will implement a single statewide refundable period of five years for all Colorado base rate areas.

21. Regarding meters and regulators, the Settlement Agreement does not adopt Staff's alternative suggestion to require new customers to bear the upfront costs of meters and regulators.

22. Black Hills will implement a single five-year statewide customer contribution refundable period for all Colorado base rate areas if the Settlement Agreement is approved by the Commission.

23. Likewise, if the Settlement Agreement is approved, Black Hills' tariffs will include a single Customer Contribution Payment Option and retain the specific language allowing customers to make a lump sum payoff at any time during the financing period with no penalty.

24. The Settlement Agreement states that while it represents a full and complete resolution of this case, the agreement expressly notes that it does not change or modify any stated arguments or positions taken by any of the settling parties in the Gas Rulemaking in and that Black Hills will necessarily comply with the final rules resulting from that proceeding.

25. In its Settlement Testimony, Black Hills argues that the Settlement Agreement serves the public interest in that the balanced and well-rounded agreement avoids unnecessary litigation and the associated costs. The Settlement Agreement allows updated line extension tariffs to go into effect more quickly and resolves all of the issues in this Proceeding on an expedited basis. The updated tariffs also provide more clarity by including the Company's penalty-free, lump sum payment option.

26. Staff states in its Settlement Testimony that the Settlement Agreement provides a reasonable outcome based on evidence presented in this Proceeding and in light of the broader uncertainty around the outcome of the Gas Rulemaking. In addition, Staff states that the Settlement is entirely consistent with the recommendations Staff provided in Answer Testimony. Staff further argues that the Settlement is in the public interest because it appropriately balances the interests of both existing ratepayers and new ratepayers, consistent with the Commission's current gas rules.

27. In its Settlement Testimony, UCA asserts that the settled upon dollar amounts for the construction allowances represent updated costs from the Company's last gas rate case, and the additional provisions in the Settlement Agreement are either a continuation of, or improvement upon, Black Hills' existing policies for which customers have based their expectations.

## 5. Conclusions and Findings

28. The Commission finds good cause to grant the Joint Motion and to approve the Settlement Agreement. The Settlement Agreement reflects a negotiation process undertaken to reach a resolution for this matter that is just, reasonable, and in the public interest. The terms of the Settlement Agreement establish a modified line extension policy for Black Hills that will be in place on an interim basis until the new line extension provisions are finalized in the Gas Rulemaking.

## II. ORDER

### A. The Commission Orders That:

1. The effective date of the tariff pages filed by Black Hills Colorado Gas, Inc. (Black Hills) with Advice Letter No. 16 is permanently suspended and shall not be further amended.

2. The tariff sheets filed with Advice Letter No. 16 are permanently suspended and shall not be further amended.

3. The Unopposed Joint Motion to Approve Settlement Agreement filed on July 29, 2022, by Black Hills, Staff of the Colorado Public Utilities Commission, and the Colorado Office of the Utility Consumer Advocate is granted, consistent with the discussion above. A copy of the approved Settlement Agreement is attached to this Decision as Appendix A.

4. Black Hills shall file an advice letter compliance filing to modify its line extension policy consistent with the findings, conclusions, and directives in this Decision. Black Hills shall file the compliance tariff sheets in a separate proceeding and on not less than two business days' notice. The advice letter and tariff sheets shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must

expire prior to the effective date. The advice letter and tariff must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

5. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

6. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
October 5, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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JOHN GAVAN

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Commissioners